

Staff Report February 8, 2022

TO: Honorable Mayor and Members of the Town Council
FROM: Merrill Buck, Town Engineer
DATE: February 1, 2022
RE: Authorize the Submission of a Notice of Intent to Comply

Recommendation

Staff recommends that the Town Council adopt a resolution authorizing the Town Manager to submit to CalRecycle a Notice of Intent to Comply with Senate Bill 1383.

Issue Statement and Discussion

Under Senate Bill (SB) 1383, if a local jurisdiction fails to adopt enforceable mechanisms (ordinances, franchise agreements, etc.) to implement the SB 1383 regulations by January 1, 2022, the California Department of Resources Recycling and Recovery (CalRecycle) can impose administrative civil penalties against the jurisdiction. Penalties vary based on the severity of the violation ranging from \$500 per day for minor and up to \$10,000 per day for major violations.

Major violations may include violations that are knowing, willful, intentional, or chronic. Specific major violations by a jurisdiction include:

- Failure to have any ordinance or similar enforceable mechanism for organic waste disposal reduction and edible food recovery
- Failure to have a provision in a contract, agreement or other authorization that requires a hauler to comply with SB 1383 regulations
- Failure to have an edible food recovery program
- Failure to have the required SB 1383 implementation records
- Implementation or enforcement of any ordinance, policy, procedure, condition or initiative prohibited by SB 1383 regulations
- Failure to submit reports to CalRecycle regarding its implementation and compliance with SB 1383 regulations.

On October 5, 2021, Governor Gavin Newsom signed SB 619, which was enacted in response to the difficulty many agencies were facing in meeting the deadlines for complying with SB 1383 due to the COVID-19 pandemic. SB 619 provides relief from violations by waiving administrative civil penalties for noncompliance during the 2022 calendar if local jurisdictions implement actions to remedy the violations. To receive relief, local jurisdictions must submit a Notification of Intent to Comply to CalRecycle before March 1, 2022.

Because the Town is still working on adopting an enforceable ordinance, amending the Recology franchise agreement, and formalizing a Memorandum of Understanding with Placer County to help run the food recovery program, staff is recommending that the Town of Loomis file the Notification of Intent to Comply. This will give the City an extended window of time, through 2022, to fully comply with SB 1383 regulations, without accruing penalties.

CEQA Requirements

There are no CEQA implications associated with the recommended action.

Financial and/or Policy Implications

There are no financial impacts associated with authorizing the submission of the Notice of Intent to Comply to CalRecycle. Not doing so, however, may subject the Town to fines as the Town is currently in violation for not having fully implemented all the required SB 1383 regulations that commenced and took effect on January 1, 2022.

Attachments

- A. Resolution, Including Exhibit A – Notice of Intent to Comply

TOWN OF LOOMIS

RESOLUTION 22 - _____

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS
APPROVING A NOTICE OF INTENT TO COMPLY**

WHEREAS, CalRecycle, in consultation with the California Air Resources Board, has adopted regulatory requirements (Regulations), consistent with the mandate of Senate Bill 1383 (Lara, 2016), that are designed to achieve the organic waste reduction goals established in Section 39730.6 of the Health and Safety Code through a 50 percent reduction in the level of the statewide disposal of organic waste from 2014 levels by 2020 and a 75 percent reduction in the level of the statewide disposal of organic waste from 2014 levels by 2025; and

WHEREAS, the Town of Loomis is a local jurisdiction required to comply with the Regulations; and

WHEREAS, The Town of Loomis expects to be facing continuing violations of the regulations that commenced and took effect on January 1, 2022; and

WHEREAS, Senate Bill 619 (Laird, 2021), through amendments to Section 42652.5 of the Public Resources Code (Statute), created a mechanism called a Notification of Intent to Comply through which a local jurisdiction may secure administrative civil penalty relief from any continuing violation of the Regulations for the 2022 calendar year and may be eligible for a broader and longer-term regulatory compliance path, including suspended administrative civil penalties, through a corrective action plan; and

WHEREAS, the Town of Loomis is a local jurisdiction authorized by the Statute to submit a Notification of Intent to Comply for CalRecycle approval; and

WHEREAS, CalRecycle shall approve a Notification of Intent to Comply that is duly adopted by the jurisdiction by formal written resolution and meets the requirements of the Statute.

NOW, THEREFORE, BE IT RESOLVED that the Council of the Town of Loomis hereby formally adopts the Notification of Intent to Comply attached as "Exhibit A"; and be it

FURTHER RESOLVED that the Town Manager of the Town of Loomis is hereby authorized and directed to submit the Notification of Intent to Comply attached as "Exhibit A" to CalRecycle for approval pursuant to the Statutes; and be it

FURTHER RESOLVED that by submitting the Notification of Intent to Comply pursuant to and subject to the above referenced requirements, the Town of Loomis represents and certifies that it will implement the proposed actions to remedy the violations according to the proposed schedule as approved by CalRecycle and in accordance with the Statute and Regulations; and be it

FURTHER RESOLVED that the Town of Loomis, by and through its Town Manager, also acknowledges and agrees to comply with any maximum compliance deadline in any corrective action plan that CalRecycle, in its sole discretion, determines to be necessary and appropriate under the circumstances for the correction of any violation(s) of the Statute and Regulations identified in its Notification of Intent to Comply.

PASSED AND ADOPTED this 8th day of February 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

Mayor

ATTEST:

Deputy Town Clerk

Notification of Intent to Comply

CalRecycle is providing this optional form as a convenience to assist jurisdictions (counties, cities, a county and city, or special districts providing solid waste collection services) for purposes of submitting a notification of intent to comply to CalRecycle [see Public Resources Code (PRC) section 42652.5(c)].

A jurisdiction may submit a notification of intent to comply if it is facing continuing violations of the Short-lived Climate Pollutants: Organic Waste Reductions requirements in Title 14 California Code of Regulations (14 CCR). The written notification of intent to comply, adopted by resolution of the jurisdiction's governing body, shall be sent to CalRecycle no later than **March 1, 2022**, to NOIC@CalRecycle.ca.gov.

A jurisdiction shall, at minimum, include the following in its notification:

1. A description, with specificity, of the continuing violations.
2. A detailed explanation of the reasons, supported by documentation, why the local jurisdiction is unable to comply.
3. A description of the impacts of the COVID-19 pandemic on compliance.
4. A description of the proposed actions the local jurisdiction will take to remedy the violations within the timelines established in 14 CCR section 18996.2 with a proposed schedule for doing so. The proposed actions shall be tailored to remedy the violations in a timely manner.

Upon approval by CalRecycle of a jurisdiction's notification and implementation of the intent to comply, a jurisdiction may be eligible for both of the following:

1. Administrative civil penalty relief for the 2022 calendar year pursuant to PRC section 42652.5(d).
2. A corrective action plan pursuant to 14 CCR section 18996.2.
 - a. CalRecycle may address through a corrective action plan any violations disclosed in a jurisdiction's notification that will take more than 180 days to correct. In this situation, the proposed actions and schedule in the jurisdiction's approved notification will be in effect until a corrective action plan is issued.

CalRecycle will respond in writing to a jurisdiction within 45 business days of receiving its notification with an approval, disapproval, request for additional information, or timeline for a decision on approval or disapproval. CalRecycle will include details about why a jurisdiction did not meet the requirements for a Notification of Intent to Comply when disapproving the jurisdiction's notification.

Please clearly print or type responses. Attach additional pages as necessary.

Jurisdiction Name:

County:

Person Completing the Form:

First Name:

Last Name:

Title:

Mailing Address:

City:

Zip Code:

Email Address:

Phone Number:

1. Select using the check boxes below or write in the continuing violations for each applicable regulatory section. For each selection, please describe the specific violations related to the regulatory section.

Example:

- (B) 14 CCR section 18984.1 Three-Container Organic Waste Collection Services
- i. Not implementing mandatory residential foodwaste collection for all residents. Note: City already provides mandatory greenwaste collection to all residents*
- ii. Not implementing mandatory commercial organics collection for all businesses under 2 cubic yards. Note: City already provides mandatory commercial organics collection to all businesses 2 cubic yard or more.*

Disclaimer: The list of possible continuing violations below is not inclusive of all potential violations of the regulations.

- (A) 14 CCR section 18984 Combined Organic Waste Collection Services. *This requirement is not included since the requirements are further specified in sections 18984.1-18984.11.*
- (B) 14 CCR section 18984.1 Three-Container Organic Waste Collection Services
- (C) 14 CCR section 18984.2 Two-Container Organic Waste Collection Services
- (D) 14 CCR section 18984.3 Unsegregated Single Container Collection Services
- (E) 14 CCR section 18984.4 Recordkeeping Requirements for Compliance with Organic Waste Collection Services
- (F) 14 CCR section 18984.5 Container Contamination Minimization
- (G) 14 CCR section 18984.6 Recordkeeping Requirements for Container Contamination Minimization
- (H) 14 CCR section 18984.7 Container Color Requirements
- (I) 14 CCR section 18984.8 Container Labeling Requirements
- (J) 14 CCR section 18984.11 Waivers Granted by a Jurisdiction
- (K) 14 CCR section 18985.1. Organic Waste Recovery Education and Outreach.
- (L) 14 CCR section 18985.2. Edible Food Recovery Education and Outreach
- (M) 14 CCR section 18985.3. Recordkeeping Requirements for a Jurisdiction's Compliance with Education and Outreach Requirements
- (N) 14 CCR section 18988.1. Jurisdiction Approval of Haulers and Self-Haulers
- (O) 14 CCR section 18988.3. Self-haulers of Organic Waste
- (P) 14 CCR section 18988.4. Recordkeeping Requirements for Compliance with Jurisdiction Hauler Program
- (Q) 14 CCR section 18989.1. CALGreen Building Codes
- (R) 14 CCR section 18989.2 Model Water Efficient Landscape Ordinance

- (S) 14 CCR section 18991.1. Jurisdiction Edible Food Recovery Program
- (T) 14 CCR section 18991.2. Recordkeeping Requirements for Jurisdiction Edible Food Recovery Program
- (U) 14 CCR section 18992.1. Organic Waste Recycling Capacity Planning
- (V) 14 CCR section 18992.2. Edible Food Recovery Capacity
- (W) 14 CCR section 18993.1. Recovered Organic Waste Product Procurement Target
- (X) 14 CCR section 18993.2. Recordkeeping Requirements for Recovered Organic Waste Procurement Target
- (Y) 14 CCR section 18993.3. Recycled Content Paper Procurement Requirements
- (Z) 14 CCR section 18993.4. Recordkeeping Requirements for Recycled Content Paper Procurement

(AA) 14 CCR section 18994.2. Jurisdiction Annual Reporting

Note: This requirement is not included since jurisdictions are still expected to report to CalRecycle.

- (BB) 14 CCR section 18995.1. Jurisdiction Inspection Requirements
Note: Section 18995.1(a)(1) should not be included because a jurisdiction should already be completing this action due to the requirements of PRC Chapter 12.9 (commencing with Section 42649.8)
- (CC) 14 CCR section 18995.2. Implementation Record and Recordkeeping Requirements
- (DD) 14 CCR section 18995.3. Jurisdiction Investigation of Complaints of Alleged Violations
Note: This requirement is not included since jurisdictions are still expected to investigate complaints.
- (EE) 14 CCR section 18995.4. Enforcement by a Jurisdiction

Use the check box(es) below to write in the continuing violations for any regulatory section(s) not reflected above and describe the specific violations related to the regulatory section.

Example:

(1) (Type regulatory section number) (Type regulatory section title)

i. Describe the specific violations related to the regulatory section

- (1)
- (2)
- (3)
- (4)
- (5)

2. A detailed explanation of the reasons why the jurisdiction is unable to comply, supported by documentation, if applicable.

As a small town, Loomis has much lower staffing levels compared to neighboring jurisdictions. Yet it is responsible for providing similar community services along with the administration of programs and state mandates. Current staffing levels allow for the continuation of routine duties along with the delivery of occasional projects, but not much else in the way of forward planning. SB 1383 regulations represented a new program that the Town tried to incorporate into the workload of existing staff - with mixed results. As such, the Town needs more time to implement the requirements. The Town plans to delegate portions of SB 1383 responsibilities to other agencies. Placer County will be helping the Town with the edible food program and Recology will be assisting with organic waste collection education, outreach and collection compliance. These agencies are also not yet up to speed in the implementation of SB 1383 requirements and need more time to comply, on the Town's behalf.

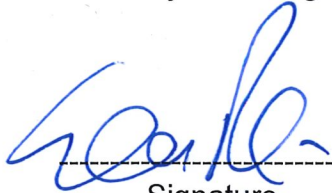
3. A description of the impacts of the COVID-19 pandemic on compliance.

The Covid-19 pandemic intensified the above stated challenges of working in a small town with minimal staff. Due to Covid-19, existing staff was often stretched or redirected in their priorities, which made it even harder to carve out capacity to move critical but non-urgent workload, such as the implementation of SB 1383, forward. Perhaps in response to this pressure, the Town's Public Works Director left the Town at the end of 2020 and took a position with a different agency. This vacancy created even more workload backlog that could not move forward until the position was filled in July 2021.

4. Provide a description of the proposed actions the jurisdiction will take to remedy the violations with a proposed schedule for completing each action. The proposed actions shall be tailored to remedy the violations in a timely manner. See optional format below.

The Town's action plan has been outlined as an attachment in the sample format suggested.

I hereby certify under penalty of perjury that the information provided herein is true and correct to the best of my knowledge.



Signature

Sean Rabé

Printed Name

Town Manager

Title

2/9/2022

Date

Description of the proposed actions with proposed schedules the jurisdiction will take to remedy the violations. The proposed actions shall be tailored to remedy the violations in a timely manner.

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18984.4 Recordkeeping Requirements for Compliance with Organic Waste Collection Services	
<u>Description:</u>	
The type of recordkeeping required is not currently a requirement in the franchise agreement with Recology	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Amend Franchise Agreement with Recology to incorporate SB 1383 requirements	mid 2022
Task 2: Identify costs associated with compliance and potentially recommend a rate increase to Council	mid to end 2022
Task 3: Request that Recology provide the required service	end of 2022

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18984.5 Container Contamination Minimization	
<u>Description:</u>	
Waste evaluations are not currently a requirement in the franchise agreement with Recology	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Amend Franchise Agreement with Recology to incorporate SB 1383 requirements	mid 2022
Task 2: Identify costs associated with compliance and potentially recommend rate increase to Council	mid to end 2022
Task 3: Request that Recology provide the required service	end of 2022

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18984.6 Recordkeeping Requirements for Container Contamination Minimization	
<u>Description:</u>	
The type of recordkeeping required is not currently a requirement in the franchise agreement with Recology	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Amend Franchise Agreement with Recology to incorporate SB 1383 requirements	mid 2022
Task 2: Identify costs associated with compliance and potentially recommend a rate increase to Council	mid to end 2022
Task 3: Request that Recology provide the required service	end of 2022

Description of the proposed actions with proposed schedules the jurisdiction will take to remedy the violations. The proposed actions shall be tailored to remedy the violations in a timely manner.

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18984.8 Container Labeling Requirements	
<u>Description:</u>	
A two container, properly colored system is currently being used, but it lacks the required labeling	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Amend Franchise Agreement with Recology to incorporate SB 1383 requirements	mid 2022
Task 2: Identify costs associated with compliance and potentially recommend a rate increase to Council	mid to end 2022
Task 3: Request that Recology provide the required service	end of 2022

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18985.1. Organic Waste Recovery Education and Outreach	
<u>Description:</u>	
Education and outreach are not currently a requirement in the franchise agreement with Recology	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Amend Franchise Agreement with Recology to incorporate SB 1383 requirements	mid 2022
Task 2: Identify costs associated with compliance and potentially recommend a rate increase to Council	mid to end 2022
Task 3: Request that Recology provide the required service	end of 2022

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18985.2. Edible Food Recovery Education and Outreach	
<u>Description:</u>	
The Town is working with Placer County and anticipates entering into an agreement which will delegate responsibility for capacity planning, education and outreach, inspection and recordkeeping associated with the food recovery program.	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Finalize the agreement with the County and take it to Council for approval	mid 2022

Description of the proposed actions with proposed schedules the jurisdiction will take to remedy the violations. The proposed actions shall be tailored to remedy the violations in a timely manner.

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18985.3. Recordkeeping Requirements for a Jurisdiction’s Compliance with Education and Outreach Requirements	
<u>Description:</u>	
The Town is working with Placer County and anticipates entering into an agreement which will delegate to them the responsibilities for capacity planning, education and outreach, inspection and recordkeeping associated with the food recovery program.	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Finalize the agreement with the County and take it to Council for approval	mid 2022

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18988.4. Recordkeeping Requirements for Compliance with Jurisdiction Hauler Program	
<u>Description:</u>	
The type of recordkeeping required is not currently a requirement in the franchise agreement with Recology	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Amend Franchise Agreement with Recology to incorporate SB 1383 requirements	mid 2022
Task 2: Identify costs associated with compliance and potentially recommend a rate increase to Council	mid to end 2022
Task 3: Request that Recology provide the required service	end of 2022

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18989.1. CALGreen Building Codes	
<u>Description:</u>	
The Town does not currently have a CALGreen Building Code Ordinance and will need to work with the Attorney's Office to develop one.	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Finalize an ordinance and take it to Council for approval	end of 2022

Description of the proposed actions with proposed schedules the jurisdiction will take to remedy the violations. The proposed actions shall be tailored to remedy the violations in a timely manner.

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18989.2 Model Water Efficient Landscape Ordinance	
<u>Description:</u>	
The Town does not currently have a Model Water Efficient Landscape Ordinance and will need to work with the Attorney's Office to develop one.	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Finalize an ordinance and take it to Council for approval	end of 2022

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18991.1. Jurisdiction Edible Food Recovery Program	
<u>Description:</u>	
The Town is working with Placer County and anticipates entering into an agreement which will delegate the responsibility for capacity planning, education and outreach, inspection and recordkeeping associated with the food recovery program.	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Finalize the agreement with the County and take it to Council for approval	mid 2022

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18991.2. Recordkeeping Requirements for Jurisdiction Edible Food Recovery Program	
<u>Description:</u>	
The Town is working with Placer County and anticipates entering into an agreement which will delegate the responsibility for capacity planning, education and outreach, inspection and recordkeeping associated with the food recovery program.	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Finalize the agreement with the County and take it to Council for approval	mid 2022

Description of the proposed actions with proposed schedules the jurisdiction will take to remedy the violations. The proposed actions shall be tailored to remedy the violations in a timely manner.

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18992.1. Organic Waste Recycling Capacity Planning	
<u>Description:</u>	
The Town is relying upon Recology, the Town's organic waste collection service provider, to complete the necessary capacity planning and report back to the Town on needs. This responsibility is not part of their current franchise agreement, however.	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Amend Franchise Agreement with Recology to incorporate SB 1383 requirements	mid 2022
Task 2: Identify costs associated with compliance and potentially recommend a rate increase to Council	mid to end 2022
Task 3: Request that Recology provide the required service	end of 2022

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18992.2. Edible Food Recovery Capacity	
<u>Description:</u>	
The Town is working with Placer County and anticipates entering into an agreement which will delegate the responsibility for capacity planning, education and outreach, inspection and recordkeeping associated with the food recovery program.	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Finalize the agreement with the County and take it to Council for approval	mid 2022

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18995.1. Jurisdiction Inspection Requirements	
<u>Description:</u>	
The Town is relying upon Recology, the Town's organic waste collection service provider, to provide the required route compliance reviews. This responsibility is not part of their current franchise agreement, however.	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Amend Franchise Agreement with Recology to incorporate SB 1383 requirements	mid 2022
Task 2: Identify costs associated with compliance and potentially recommend a rate increase to Council	mid to end 2022
Task 3: Request that Recology provide the required service	end of 2022

Description of the proposed actions with proposed schedules the jurisdiction will take to remedy the violations. The proposed actions shall be tailored to remedy the violations in a timely manner.

<u>Regulatory Requirement and Description:</u>	
14 CCR section 18995.2. Implementation Record and Recordkeeping Requirements	
<u>Description:</u>	
The Town is relying upon Recology, the Town's organic waste collection service provider, to provide and furnish the required recordkeeping. This responsibility is not part of their current franchise agreement, however.	
<u>Action:</u>	<u>Completion Date:</u>
Task 1: Amend Franchise Agreement with Recology to incorporate SB 1383 requirements	mid 2022
Task 2: Identify costs associated with compliance and potentially recommend a rate increase to Council	mid to end 2022
Task 3: Request that Recology provide the required service	end of 2022